

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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REGINALD C. HOWARD,

Plaintiff,

v.

BRIAN CONNETT, ET AL.

Defendants.

Case No. 2:11-cv-01402-APG-GWF

ORDER TO PRODUCE VIDEO FOOTAGE

Pending before the Court are Defendants' motion for summary judgment and Plaintiff's motion for summary judgment.¹ (Dkt. Nos. 49, 52.) This Order concerns Counts One and Four of Plaintiff's First Amended Complaint ("FAC," Dkt. No. 4) and the production of evidence necessary to Plaintiff's opposition to Defendants' motion.

Count One of the FAC alleges that Correctional Officers Joseph Lewis and J. Jones used excessive force against Plaintiff on January 28, 2011 and that the subsequent medical examination was tainted by Officer Lewis's intimidation of the examining nurse. Plaintiff alleges that a video recording of the examination in the infirmary will shed light on what transpired in the infirmary and during the alleged violent encounter. The Court agrees. Plaintiff alleged the existence of the video footage in the FAC, and he requested it in discovery. (Dkt. No. 4 at 9; Dkt.

¹ Plaintiff's motion for summary judgment also serves as his opposition to Defendants' motion for summary judgment. The Court primarily refers to this filing as Plaintiff's opposition brief because it is drafted in the style of an opposition rather than a motion seeking affirmative relief. For example, Plaintiff ends the brief by arguing that Defendants' motion should be denied without any argument that his motion should be granted. (Dkt. No. 54 at 23.)

1 No. 54 at 120.) In his opposition brief, Plaintiff effectively explains in an affidavit that the
2 footage is necessary to properly oppose summary judgment. (Dkt. No. 54 at 35–37.)

3 Similarly, as to Count Four, Plaintiff indirectly contends that video footage exists of his
4 alleged physical altercation with Correctional Officer Rene Galvan in or near the law library on
5 April 19, 2011. (See Dkt. No. 54 at 120:20–22.) Plaintiff requested this footage in discovery and
6 he attached a copy of this request to his opposition brief. (*Id.*) Also, Plaintiff refers generally to
7 “films” in the “Conclusion” section of his opposition brief. (*Id.* at 23.)

8 In light of the Ninth Circuit’s holding that “courts should construe liberally motion papers
9 and pleadings filed by *pro se* inmates and should avoid applying summary judgment rules
10 strictly,” the Court construes Plaintiff’s reference to “films” and inclusion of the discovery
11 request as an averment that the video footage is necessary to properly oppose summary judgment.
12 *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010); *see also Eitel v. McCool*, 782 F.2d 1470,
13 1472 (1986) (“Cases should be decided on their merits whenever possible.”). The specific
14 allegations in the FAC and in Plaintiff’s opposition brief provide the necessary context to
15 understand the importance of this video footage to Count Four and to Plaintiff’s ability to oppose
16 summary judgment.

17 To the Court’s knowledge, Defendants have not provided the above-described video
18 footage to Plaintiff.

19 Under Rule 56(d)(3), the Court orders Defendants to either (1) produce the video footage
20 of Plaintiff’s medical examination on January 28, 2011 and of Plaintiff’s interaction with Officer
21 Galvan on April 19, 2011 in or near the law library; or (2) explain why the footage is unavailable.
22 Defendants shall comply within 30 days from the date of this Order.

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24 Dated: December 17, 2013

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28 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE